EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND THE WINDSOR FRAMEWORK

C(2023) 1712 final + Annex

Communication to the Commission: Approval of the content of a draft for a Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty

This has been submitted to Parliament by the Department for Business and Trade on 3 May 2023.

SUBJECT MATTER

The European Commission has endorsed an amendment to the General Block Exemption Regulation (GBER). The GBER sets out specific categories of aid which, if compliant with the criteria set out in the Regulation, do not require prior notification and approval by the European Commission. Most State aid that is granted falls under GBER. For instance, new GBER measures accounted for 93% of total new non-crisis (i.e. non-COVID related) measures in 2021.[1]

The GBER amendment broadens the coverage of the Regulation and significantly increases the notification thresholds (above which aid needs to be individually notified and approved by the commission) for aid to various sectors, particularly where it supports environmental protection, decarbonisation projects, and renewable energy. It also lowers transparency thresholds for aid awards and extends the application of the regulation until the end of 2026.

While the UK is no longer an EU Member State, Article 10 of the Windsor Framework provides that EU State aid rules will continue to apply to the UK in respect of measures which affect trade in goods and wholesale electricity between Northern Ireland and the European Union.

SCRUTINY HISTORY

The Department for Business, Energy and Industrial Strategy (BEIS) submitted an EM dated 17 August 2021 on the previous amendment to GBER C(2021) 5336; Commission Regulation of 23 July 2021 amending Regulation (EU) 651/2014

[1] State Aid Scoreboard 2022: https://competition-policy.ec.europa.eu/state-aid/scoreboard_en

declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. The House of Commons European Scrutiny Committee did not report substantively on the document and completed scrutiny on 22 September 2021 (report 08, 21/22). That proposal remains under scrutiny by the House of Lords European Affairs Committee's sub-committee on the Protocol on Ireland/Northern Ireland while the Committee awaits a further update from the Government on the implications for Northern Ireland in the light of the Windsor Framework.

MINISTERIAL RESPONSIBILITY

The Secretary of State for Business and Trade has primary responsibility for subsidy control policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The regulation of the provision of subsidies is a reserved matter and an excepted matter in Northern Ireland.

However, Northern Ireland Departments have a particular interest given the application of EU State aid rules under Article 10 of the Windsor Framework to measures affecting trade in goods and wholesale electricity between Northern Ireland and the EU. The Subsidy Control Units in the Department for the Economy (Northern Ireland) and the Department of Agriculture, Environment and Rural Affairs have been made aware of this amendment and consulted in the preparation of the Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

The legal base for the General Block Exemption Regulation is contained in the Treaty on the Functioning of the European Union (the Treaty).

Article 108(3) of the Treaty requires notification to, and approval from, the European Commission before granting aid. Article 109 of the Treaty permits the European Council to determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty, the European Commission may adopt regulations relating to those categories of State aid.

In the UK, these regulations apply by virtue of Article 10 of the Windsor Framework. The Withdrawal Agreement and Windsor Framework have direct effect in UK domestic law by Section 7A of the EU (Withdrawal) Act 2018.

ii. Voting Procedure

Not applicable. State aid control is an exclusive competence of the European Commission, and it is therefore not required to seek the approval of the European Council or European Parliament for a Commission Regulation.

iii. Timetable for adoption and implementation

The Commission endorsed the English text version of the Regulation amendment on 9 March 2023. The Regulation is expected to be formally adopted in the coming weeks once text is translated into all official languages of the European Union.

POLICY IMPLICATIONS

The GBER is a central pillar of EU State aid regime. It declares specific categories of State aid compatible with the internal market of the European Union. Aid that meets the conditions set out in the Regulation is exempted from the requirement of prior notification, assessment, and approval by the Commission.

As with other State aid rules, the GBER amendment will apply to aid given in the UK which falls within scope of Article 10 of the Windsor Framework. This is aid that affects trade in goods and wholesale electricity between Northern Ireland and the EU. Article 10 primarily applies to aid granted to enterprises that are located in Northern Ireland. However, it also applies to aid granted in Great Britain in very limited circumstances. The Joint Declaration on the application of Article 10(1) of the Windsor Framework provides helpful clarification that EU State aid rules will only apply where there is a genuine and direct link to Northern Ireland and where the measure will have a foreseeable and material effect on trade between Northern Ireland and the EU in goods or wholesale electricity. The European Commission and the UK will set out in their respective guidance further detail on the application of Article 10, providing greater certainty to public authorities and businesses across the UK. Subsidies outside of scope of Article 10 need to comply with the UK Subsidy Control Act 2022 instead of EU State aid rules.

The GBER revision broadens the coverage of the Regulation as well as significantly increases the notification thresholds for aid to key sectors. The changes are designed to primarily support net-zero goals, spur digital transformation, and soften the impact of high energy prices on businesses. It therefore sits alongside and complements the recently adopted Temporary Crisis and Transition Framework which forms part of the EU's Green Deal Industrial Plan.

The main changes will make it easier for aid to be granted to support environmental protection, decarbonisation projects, and renewable energy. For instance, the amendments allow high aid intensities for investment aid to remediate environmental damage, rehabilitate natural habitats and ecosystems, protect biodiversity and implement nature-based solutions for climate change adaptation and mitigation.[2] The criteria concerning investment aid for energy efficient district heating or cooling systems now explicitly allow for generation from renewable sources and exclude aid for the construction or upgrade of fossil fuel generation facilities (except for natural gas).

The amendments are designed to encourage greater uptake of low-carbon forms of transport in order to reduce greenhouse gas emissions in the transport sector. Investment aid can be provided for acquiring clean or zero-emissions vehicles or retrofitting vehicles. Existing provisions around investment aid for hydrogen refuelling infrastructure will now allow for hydrogen that is not renewable, provided that the Member State obtains a commitment from the beneficiary that the refuelling infrastructure will solely supply renewable hydrogen by 2035.

While the revisions generally reduce the burdens on aid givers, the European Union's push for greater transparency and accountability in the use of public funds is reflected in the revised GBER, with transparency thresholds set at lower levels than the previous iteration. Individual aid awards above €100,000 (£88,400)[3] will generally need to be uploaded and published within six months of date at which the aid is granted.[4] A lower threshold of €10,000 (£8,840) generally applies for beneficiaries active in primary agriculture production and for beneficiaries active in the fishery and aquaculture sector.[5]

Finally, the GBER amendment prolongs the application of the Regulation for an additional three years until the end of 2026. Thresholds for aid to be individually notified to and approved by the Commission have been raised across the board in view of this amendment and reflecting higher rates of inflation. There are also more significant uplifts in the amount exempted from notification, such as for the provision of training and for certain research and development projects which involve several Member States and deliver cross-border benefits. Public authorities will be able to make use of these additional flexibilities where appropriate when granting aid in scope of the Windsor Framework in Northern Ireland.

CONSULTATION

Not applicable.

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[2] Aid covering up to 100% of the eligible costs is allowed for investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems. Aid covering up to 70% of the eligible costs is allowed for investments in the protection or restoration of biodiversity and in nature-based solutions for climate change adaptation and mitigation, with an additional 20 percentage points permitted for aid granted to small undertakings and additional 10 percentage points for aid granted to medium-sized undertakings.

[3] Figures given in GBP use the exchange rate as of 24 April 2023, rounded to three significant figures.

[4] This was formerly set at €500,000 (£442,000).

[5] This was formerly set at €60,000 (£53,000) for primary agriculture production and €30,000 (£26,500) for fisheries and aquaculture.

FINANCIAL IMPLICATIONS

The proposal carries no financial implications of itself, but rather sets the rules for how aid may be granted under EU State aid rules without the need for an individual approval from the Commission.

MINISTERIAL NAME AND SIGNATURE

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